

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
PACIFICORP DBA UTAH POWER & LIGHT) CASE NO. PAC-E-02-1
COMPANY FOR APPROVAL OF CHANGES)
TO ITS ELECTRIC SERVICE SCHEDULES.) ORDER NO. 28998
_____)**

On November 15, 1999, the Commission issued final Order No. 28213 in PacifiCorp/ScottishPower merger Case No. PAC-E-99-1. The Commission approved the merger transaction subject to terms and conditions. The following was one of those conditions:

Merger Approval Condition No. 2

At a minimum, ScottishPower shall not seek a general rate increase for its Idaho service territory effective prior to January 1, 2002.

Case No. PAC-E-99-1, Order No. 28213 p. 8.

Commission Findings

As a final and irrefutable measure to ensure that rates will not increase as a result of the merger, we hereby impose the additional condition (Merger Approval Condition No. 2) that following the merger, PacifiCorp shall not seek a general rate increase effective prior to January 1, 2002. This literally guarantees that PacifiCorp's customers will see an immediate rate reduction lasting at least two years through the combination of the merger rate credit and the moratorium on general rate increases imposed herein.

Order No. 28213 p. 31.

On March 20, 2002, Intervenor Timothy Shurtz filed a Petition for Clarification requesting that the Commission clarify, explain and enunciate the meaning of Merger Condition No. 2. Reference IDAPA 31.01.01.325. Mr. Shurtz asks that the Commission "clarify how the proposed retroactive or 'deferred excess net power costs' recovery sought now are not in reality an attempt to avoid the 'moratorium' agreed to in inducing this Commission to accept the merger then being considered."

Included in his Petition for Clarification, the Petitioner also cites the following Order language “PacifiCorp/ScottishPower shall not subsidize its non-regulated businesses with its regulated businesses.” Order No. 28213 p. 14.

Commission Findings

On November 15, 1999, after nearly a year of investigation and numerous hearings, the Commission issued Order No. 28213 approving the merger of PacifiCorp with Scottish Power. Many issues and concerns were raised in the course of that proceeding, notably service quality and rates. Approval of the merger was subject to 46 conditions to address the concerns raised and ensure that the public interest was served by approval of the merger. Merger Condition No. 2 set forth above was included to prevent the Company from increasing customer rates for any reason prior to January 1, 2002. Thus customers were guaranteed a two-year period of rate stability, and Commission oversight to prevent any merger related increases was enhanced.

On November 1, 2000, PacifiCorp filed an Application for a deferred accounting order. Extraordinarily high wholesale market prices outside the control of the Company were resulting in actual costs for the Idaho jurisdiction that greatly exceeded Idaho’s allocated share. Intervenors in that case argued that the application should be dismissed because its approval would violate conditions imposed by the merger Order. The Commission found that authorization of deferred accounting for these expenses was only a mechanism to preserve them for future consideration, not a guarantee of future recovery and would not result in a rate increase prior to January 1, 2002. Approval of PacifiCorp’s request for a deferred accounting order, we found, was not a violation of the merger condition that no rate increase should be requested to be effective prior to that date. Our decision simply provided PacifiCorp the opportunity to request and litigate the recovery of such costs in the future.

On January 2, 2002, PacifiCorp filed this case. One of the matters now at issue is the recovery of the costs that were deferred pursuant to our earlier Order. Intervenor Shurtz has requested that we clarify why consideration of the deferred amounts is not a violation of the Merger Conditions prohibiting rate increases before January 1, 2002. The answer is clear from an examination of the language of the condition imposed. PacifiCorp was prohibited from seeking a general rate increase effective prior to January 1, 2002. It did not seek any increase in rates to be effective before 2002, therefore the Company has fulfilled that condition. The

Commission specifically found in Order No. 28630 that deferred accounting was appropriate for the unanticipated and extraordinarily high power costs experienced as a result of the wholesale market. That deferral preserved those expenses for consideration now. We do not decide whether, or how much, if any, of those expenses should be passed on to customers. We do find that there is not and can not be a violation of Merger Condition No. 2 if those costs are approved for recovery, either as part of a settlement or otherwise.

CONCLUSIONS OF LAW

The Commission has jurisdiction over the issue raised in Intervenor's Petition for Clarification and over PacifiCorp dba Utah Power & Light Company, an electric utility, pursuant to Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER

In consideration of the foregoing and as more particularly described above IT IS HEREBY ORDERED and the Commission by way of clarification of its prior Order No. 28213 in PacifiCorp/ScottishPower merger Case No. PAC-E-99-1 states that consideration in the instant case of recovery of excess power costs incurred from November 1, 2000 through October 31, 2001 is not precluded by PacifiCorp/ScottishPower Merger Approval Condition No. 2 (Case No. PAC-E-99-1, Order No. 28213).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th
day of April 2002 .

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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DISSENTING OPINION
COMMISSIONER DENNIS S. HANSEN
CASE NO. PAC-E-02-1, ORDER NO. 28998

When the Commission approved the ScottishPower merger, two important conditions were approved for the benefit of the ratepayers. First, “the rates will not increase as a result of the merger” and secondly, “at a minimum, ScottishPower shall not seek a general rate increase for its Idaho service territory effective prior to January 1, 2002.”

In my opinion, these conditions imposed a “rate freeze” for two years. It provided ratepayers a tangible benefit in the form of a belief and expectation of no rate increase for two years. I believe that this prevents PacifiCorp, under Merger Condition No. 2, from requesting recovery of excess power costs that occurred during the moratorium period.

Granting PacifiCorp the opportunity to recover the deferred costs that were incurred during part of the rate moratorium period undermines the benefits of this agreement to the ratepayers.

PacifiCorp is not asking for a rate increase, but it is asking for the ratepayers to reimburse it for costs of doing business during the time period that the rate moratorium was in place. In other words, the Company wants to recover costs incurred during the rate moratorium. What good is a two-year rate moratorium if the Company is allowed to go back over a year’s time to November 1, 2000 and assess the customers additional costs based on a year in which the rate moratorium freeze was in place? I believe ratepayers would not have supported the merger condition if they had known that PacifiCorp could petition this Commission for reimbursement of costs incurred during the rate moratorium freeze.

Granting PacifiCorp the right to defer these costs then and collect them now from the ratepayers circumvents the prohibition against rate increases prior to January 1, 2002.

Allowing the deferred cost requested by PacifiCorp allows rates to increase based on an isolated look at wholesale power costs while ignoring all other revenue and expenses of PacifiCorp. These concerns are further magnified by the fact that there has not been a rate case in Idaho addressing PacifiCorp’s net power costs in over 12 years.

I believe for the reasons stated above that the Commission should dismiss this case because it truly violates a condition of the agreement.

DENNIS S. HANSEN, COMMISSIONER